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MAILED

MAR 3 1 2003

Paper No. 13

Technology Center 2100

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|---------------------------------------|---|----------------------------------|
| In re Application of: Abramson et al. |) | |
| Application No.: 09/209,015 |) | DECISION ON PETITION TO |
| Filed: December 10, 1998 |) | ACCEPT CORRESPONDENCE AS |
| For: SYSTEM AND METHOD FOR |) | TIMELY FILED UNDER 37 CFR |
| AUTOMATIC MAPPING OF HYPERTEXT |) | §1.8(b) |
| INPUT FIELDS TO SOFTWARE |) | |
| COMPONENTS |) | |
| |) | |

This decision is in response to the communication filed March 11, 2003, renewing the request for withdrawal of the holding of abandonment. The request is being treated as a petition under 37 CFR §1.8(b) to accept correspondence as timely filed.

This application was held abandoned for failure to file a response in a timely manner to the Office action mailed on April 19, 2002 (Paper No. 6). A Notice of Abandonment was mailed on October 21, 2002 (Paper No. 7). The original petition was dismissed as untimely and for petitioners' failure to file a terminal disclaimer along with the appropriate fee.

Issues

In the request for reconsideration, petitioners have provided a terminal disclaimer along with an authorization to charge any fee to Deposit Account No. 08-0219.

In addition, petitioners' representative has continued the dialogue concerning "who did what, when" which remains moot to the fundamental issue of whether applicants filed a timely response and whether the original petition was timely filed. Mr. Diener's footnote is duly noted that while the original submission omitted the cover sheet from the USPTO that would have shown the mail date of October 21, 2002, he did include a statement to that effect on page 1 of the "Request to Withdraw Abandonment." There was no intention to suggest the "submission was misleading."

Mr. Diener states, "someone from the Patent Office called and said that the correspondence was being rejected because the application had already been abandoned." This "event" appears to be

salient to Mr. Diener's contention that the "correspondence sent on October 18, 2002 was wrongfully rejected because the application had been wrongfully abandoned."

Decision

Mr. Diener's statements regarding correspondence being rejected and any record of a telephone call are not supported in the file record. There is no indication through an interview summary or otherwise that someone from the USPTO called Mr. Diener regarding correspondence being rejected because the application was abandoned. Since Mr. Diener has not provided a name or date of this event, further investigation cannot be made. While papers may be "not entered" in a procedural sense, the Office policy is to physically match papers to the file if they are received no matter what the current status of the application.

However, the more interesting point concerns what correspondence might have been the subject of such a highly unusual telephone call. A review of the file shows that until the petition was submitted on January 17, 2003, *there had been no correspondence in the file from applicants since the filing of applicants' amendment with a certificate of mailing dated October 22, 2001*. So it may forever remain a mystery as to what correspondence may have prompted the telephone call. There is no support in the file for Mr. Diener's contention that any correspondence was "wrongfully rejected."

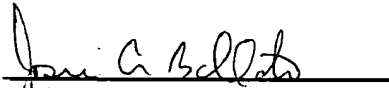
Since there was no evidence of a paper filed along with any appropriate extensions of time in response to the final rejection mailed April 19, 2002 (until the evidence submitted on January 17, 2003 with the petition), the application was in fact abandoned at the end of the shortened statutory period of three months set in the final rejection which would have been July 19, 2002. Therefore, Mr. Diener's remarks regarding the premature nature of the mailing of the Notice of Abandonment are without merit and continue to be moot.

The previous petition decision addressed the applicants' original facsimile process. However, since the original facsimile has never been located, the matter was only raised to suggest to petitioners' representative how to handle future facsimile transmissions to ensure compliance with Office practice.

Regarding petitioners' delay in filing the original petition, the Office can only rectify errors if the papers are found in the file. As stated above, no correspondence relating to any filing on October 18, 2002 had ever been matched to the case until the petition was filed, so the examiner could not create non-existent documents. In the end, even if the examiner had notified applicants that the Notice of Appeal and extension of time were missing, applicants would still have needed to file a petition requesting the papers to be accepted as timely filed since the papers were being filed on the six month date.

The paper submitted in January 2003 supplemented with a statement on February 4, 2003 along with the terminal disclaimer submitted with this request for reconsideration, now meet the conditions necessary to consider the papers as timely filed as of October 18, 2002. The request for reconsideration is granted. The holding of abandonment is withdrawn.

The period for reply will continue to run from the filing date of October 18, 2002 for the Notice of Appeal. The application is being forwarded to the Technical Support staff for processing of the withdrawal of the holding of abandonment and thereafter will be sent to Technology Center 2100 Central Files to await any further filing from applicants which should be accompanied by the appropriate extensions of time and appropriate fees.



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